those facilities and services that are truly bottlenecks. That category does not include competitive data networking services or the advanced data facilities that are used only to provide advanced telecommunications capabilities.

The specialized equipment used to provide xDSL, such as DSLAMs and ATM switches, are facilities that any competitor can supply, and many do. As Commission staff have recognized, competitors such as WorldCom and Covad now purchase unbundled loops from incumbent LECs and combine them with their own DSLAMs and packet-switched networks to offer ISDN and xDSL to business customers.[27] Because any competitor may purchase DSLAMs from a third-party vendor and collocate them in U S WEST's central offices, 47 U.S.C. § 251(c)(6), DSLAMs cannot be a "bottleneck" facility.[28] This is equally true for the routers and transport facilities that make up U S WEST's cell- and packet-switched data networks (including the packet-switched network that carries xDSL data traffic beyond the central office); the market for this equipment is fiercely competitive, and none of it needs to be located on incumbent LEC property. These are not essential facilities that competitors must go without if U S WEST did not unbundle them at cost.

---

[27] See Kevin Werbach, A Digital Tornado: The Internet and Telecommunications Policy, Office of Plans and Policy Working Paper at 34 (Mar. 1997). For a description of how Covad uses collocated DSLAMs and unbundled loops to provide competitive xDSL, see Bob Metcalfe, "Covad Offers Competitive, High-Speed Connections Right Under SBC's Nose," Infoworld at 87 (Dec. 22, 1997).

[28] U S WEST does not seek relief from its obligation to provide conditioned loops as unbundled network elements and collocation space to competitive carriers. With these two elements, plus appropriate transport from U S WEST where necessary, a competitive CLEC can construct its own xDSL service.

Similarly, the Commission should not require U S WEST to make its finished MegaBit and data networking services available at wholesale discounts for resale because there are no obstacles to their competitive provision. The markets to provide these services (or their close substitutes) are vigorously competitive. Set forth above are some of the many firms, including non-telephone companies, that currently provide national and regional internet backbone services. The markets for other cell- and packet-switched networking services are even more open and competitive.[29/] Similarly, the market for xDSL and its competitive substitutes is wide open. Not only are there multiple competitive providers of digital subscriber line services, as noted in the previous paragraph; but xDSL is just one of many high-bandwidth technologies — including cable modems, unlicensed-spectrum wireless modems, fixed wireless loop technologies, LMDS, and satellites — competing to bring customers high-speed network access.[30/] In the Phoenix area, for example, U S WEST's MegaBit Service offerings compete

---

29/ Independent consulting firm International Data Corporation reported that the total U.S. market for cell- and packet-switched networking services would grow from $2.0 billion in 1996 to almost $3.3 billion by year-end 1997, a 64% growth rate. IDC forecasted that this market would grow to more than $10.5 billion by 2001. See IDC Corporation, U.S. Packet/Cell-Based Services Market Share and Forecast 2 (Oct. 1997). The report noted that the many competitors in this market come from a variety of different industry sectors, and include incumbent LECs (such as U S WEST and GTE), interexchange carriers (such as AT&T and MCI), competitive LECs (such as MFS), and non-carrier value-added network providers (such as IBM, CompuServe, and Infonet). Id. at 5-6.

30/ In a recent speech, Commissioner Ness catalogued many of the different companies competing to offer broadband services and the different technologies that they are using or developing. See Remarks of Commissioner Susan Ness before the WashingtonWeb Internet Policy Forum at 3-4 (Feb. 9, 1998) (discussing, among other technologies, xDSL, cable modems, unlicensed wireless internet access, LMDS, and satellite data services). Commissioner Ness properly recognized that these technologies are substitutes that compete with one another for the same customers. Id. at 6.

directly with the @Home services Cox Communications offers over its hybrid fiber-coaxial networks.[31/] Because U S WEST is starting in these markets with virtually zero market share, there is little risk that U S WEST would be able to restrict competition in them.[32/]

U S WEST emphasizes that it is also committed to making these services broadly available to independent ISPs on the same basis that it makes them available to itself. Basic xDSL service will be available to all ISPs, including U S WEST's internet access service, on equal terms, subject to Open Network Architecture principles. As explained above, the advanced services U S WEST will be able to deploy if it is given regulatory relief greatly benefit the ISPs in its region and not only U S WEST. If U S WEST can deploy greater bandwidth to smaller markets, ISPs in these markets will be able to obtain the higher-quality backbone connections now available only to ISPs in larger metropolitan areas, and without having to pay prohibitive

---

31/ See Sandra Guy, "DSL Headway," Telephony at 30-32 (Feb. 9, 1998).

32/ That these services would be U S WEST's initial offerings in their respective markets means that there is no need to make them available for resale to competitors at discounted prices, according to the standards laid out in the Commission's order denying BellSouth permission to enter the interLATA market in Louisiana. First, given that U S WEST has zero current market share in these services, there can be no concern that the asked-for forbearance "may reflect an attempt by [an] incumbent LEC to preserve [its] market position." Application by BellSouth Corporation, *et al.* Pursuant to Section 271 of the Communications Act of 1934, As Amended, To Provide In-Region, InterLATA Services in Louisiana, Memorandum Opinion and Order, CC Dkt. No. 97-231, ¶ 68 (Feb. 4, 1998). Second, it strains credulity to suggest that U S WEST is asking for forbearance in its data businesses because it plans to "convert" its existing basic voice customers en masse to deregulated service offerings, and thereby "evade" regulatory scrutiny of its core business. Id. ¶ 69. As explained above, a primary reason to deploy xDSL and similar data technologies is to enhance the reliability of the existing circuit-switched voice network, not obviate it; by removing data communications from the voice network, these technologies strengthen incumbent LECs' core voice service offerings. More fundamentally, whatever the future potential for voice over the internet, a widescale conversion of existing circuit-switched voice traffic into packet-switched data communications is clearly some time away.

distance-sensitive backhaul charges. The more broadly U S WEST is able to deploy its MegaBit services giving customers fast internet access, the greater will be the demand for ISP services. For this reason, independent ISPs have actually been the most enthusiastic customers of U S WEST's MegaBit offerings. In the four months that these services have been available in Phoenix, the first city in which they were deployed, twelve independent ISPs have subscribed to MegaCentral connections that allow their subscribers to connect to their services at higher speeds. Moreover, as the Commission has recently noted, competition in internet transmission and hosting markets is becoming sufficiently robust, and competitors sufficiently powerful, that it is increasingly impossible for an incumbent such as U S WEST to discriminate in favor of its own advanced-service operations.[33/] Both the marketplace and the Open Network Architecture rules ensure that U S WESTs data services will serve the entire community of ISPs.

In sum, U S WEST has specifically tailored its service offerings and its request for relief to be pro-competitive. Granting this petition will benefit CLECs and unaffiliated ISPs, as well as the people who live in U S WEST's region.

CONCLUSION

For these reasons, U S WEST asks the Commission to issue an order:

1. Finding that the Commission's ban on interLATA data carriage and its rules implementing 47 U.S.C. §§ 251(c)(3) and (4) hinder "the deployment on a reasonable and timely

---

33/ See *Computer III* Further Remand Proceedings, Further Notice of Proposed Rulemaking, CC Dkt. Nos. 95-20, 98-10 at ¶ 36 (released Jan. 30, 1998).

basis of advanced telecommunications capability to all Americans" within the meaning of Section 706(a) of the Telecommunications Act of 1996.

2. Permitting U S WEST to build and operate internet backbone networks and other packet- and cell-switched networks across LATA boundaries within its region.

3. Allowing U S WEST to transport data across LATA boundaries incident to its provision of MegaBit Services or other digital subscriber line services.

4. Forbearing from applying the requirements of 47 U.S.C. § 251(c)(3) and the Commission rules implementing those requirements to the nonbottleneck facilities used to provide U S WEST's packet- and cell-switched network services and its MegaBit and other digital subscriber line services.

5. Forbearing from applying the requirements of 47 U.S.C. § 251(c)(4) and the Commission rules implementing those requirements to U S WEST's data networking, MegaBit, or other digital subscriber line service offerings.

Respectfully submitted,

William T. Lake
John H. Harwood, II
Jonathan J. Frankel
WILMER, CUTLER & PICKERING
2445 M Street, N.W.
Washington, D.C. 20037
(202) 663-6000

Robert B. McKenna
Jeffry A. Brueggeman
U S WEST, Inc.
1020 19th Street, N.W.
Washington, D.C. 20036
(303) 672-2861

Counsel for U S WEST Communications, Inc.

Of Counsel:
Dan L. Poole

February 25, 1998

Service List

Chairman William E. Kennard
Federal Communications Commission
Room 814
1919 M Street, N.W.
Washington, DC 20554

Commissioner Susan Ness
Federal Communications Commission
Room 832
1919 M Street, N.W.
Washington, DC 20554

Commissioner Harold Furchtgott-Roth
Federal Communications Commission
Room 802
1919 M Street N.W.
Washington, DC 20554

Commissioner Michael Powell
Federal Communcation Commission
Room 844
1919 M Street N.W.
Washington, DC 20554

Commissioner Gloria Tristani
Federal Communications Commission
Room 826
1919 M Street N.W.
Washington, DC 20554

A. Richard Metzger
Chief, Common Carrier Bureau
Federal Communications Commission
Room 500
1919 M Street N.W.
Washington, DC 20554

Secretary Magalie R. Salas
Federal Communications Commission
Rm. 222
1919 M Street, N.W.
Washington, DC 20054

International Transcription
Services, Inc.
1231 20th Street, N.W.
Washington, DC 20026

Carol Mattey
Federal Communications Commission
Chief, Policy and Program Plan Division
Room 544
1919 M Street, N.W.
Washington, DC 20554

Jason Oxman
Federal Communications Commission
Policy and Program Plan Division
Room 544
1919 M Street, N.W.
Washington, DC 20554